

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Antonio Montero,

Petitioner,

v.

Bureau of Immigration & Custom
Enforcement,

Respondent.

C/A No. 9:22-cv-885-SAL

ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Molly H. Cherry made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) (the “Report”). [ECF No. 66.] For the reasons below, the court adopts the Report and dismisses the action for lack of prosecution.

Petitioner Antonio Montero filed this *pro se* action for federal habeas relief under 28 U.S.C. § 2241. [ECF No. 1.] On October 27, 2023, Respondent moved for summary judgment on Petitioner’s claims. [ECF No. 51.] The magistrate judge thereafter advised Petitioner that judgment could be entered against him if he failed to respond to Respondent’s motion. *See* ECF Nos. 52, 53. Petitioner did not respond, despite the court extending his deadline for doing so multiple times. *See* ECF Nos. 55, 60, 63.

The Report accordingly recommended the court dismiss Petitioner’s action for failure to prosecute. [ECF No. 66 at 1–3 (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–32 (1962) and Fed. R. Civ. P. 41(b)).] The magistrate judge also advised Petitioner of the procedures for objecting to the Report and of the consequences for failing to do so by April 30, 2024. *Id.* at 4. Petitioner, however, did not timely file objections.

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The court must review *de novo* only the portions of the Report to which a party has specifically objected, and it may accept, reject, or modify the Report in whole or in part. *See* 28 U.S.C. § 636(b)(1). In the absence of objections, the court is not required to provide an explanation for adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

After reviewing the Report, the applicable law, and the record of this case in accordance with the above standard, the court finds no clear error. The Report, ECF No. 66, is therefore adopted in full and incorporated herein. This action is **DISMISSED** for lack of prosecution.

IT IS SO ORDERED.

May 13, 2024
Columbia, South Carolina


Sherri A. Lydon
United States District Judge